

OPINION
66-345 (Dec 21)

December 21, 1966 (OPINION)

Mr. A. S. Benson

State's Attorney

Bottineau County

RE: Waters - Water Management Districts - Definition of Taxable Valu

This office acknowledges receipt of your letter of December 16, 1966, requesting the opinion of this office with reference to the interpretation of section 61-16-22 of the North Dakota Century Code as amended by the 1965 Session Laws. The pertinent paragraph of your letter is as follows:

What is the definition of taxable value as set forth in this section? Does this mean taxable value as shown in the county auditor's office or does it mean taxable value as far as assessments are concerned? It is my opinion that the taxable value as set forth in this section of the law would mean the actual taxable value as shown in the county auditor's office."

With your letter you included a photostatic copy of section 61-16-22, as amended, and the underlined portion thereof on which you desire our interpretation is as follows:

* * * If within thirty days after the first publication of such resolution, the owners of property liable to be specially assessed for the proposed improvement shall file written protests with the secretary of the board, protesting against the improvement, the board at the time set for such hearing shall determine the sufficiency thereof. If the board finds the protests to contain the names of the owners of a majority by taxable value of the land subject to assessment for construction of the proposed project, then the protests shall be a bar against proceeding further with such improvement.
* * *." (Emphasis supplied.)

The question to be resolved is the meaning of the phrase "by taxable value" and how said "taxable value" is determined. In chapter 40-22, dealing with improvements by special assessments in municipalities, the protest to bar the proposed improvement in order to prevail must contain "the names of the owners of a majority of the area of the property included within the improvement project." In section 61-16-22 the standard is a majority "by taxable value."

It seems to us that the usual and customary definition of the term "taxable value" is the valuation of the land as finally determined by the state board of equalization, and is the valuation upon which the rate of levy is finally computed and against which the taxes are extended. See section 57-02-01(7).

With reference to the issuance of bonds by a governmental

subdivision, section 21-03-01(4) states that "'Value of taxable property' or 'the assessed valuation' of a municipality shall mean the full and true one hundred percent value of all taxable property in such municipality as finally equalized by the state board of equalization."

The alternative view would be to hold that the "taxable value" is the amount assessed against each parcel of land to be benefited by the improvement. But, as we understand chapter 61-16, the prospective benefits to the land against which the special assessments are placed have not been adequately determined at the time of the filing and hearing of protests. If this latter view was intended, the statute could have so stated, and clearly. The "taxable value" is simply a measuring stick to enable the board to determine the financial interests of the landowners in the area intended to be benefited.

Furthermore, under certain conditions a general tax levy can be made against the lands in the county where the project is situated, and some projects are carried through by a combination of special assessments and a general tax levy. See section 61-16-35. This provision in the law supports the interpretation that the term "taxable value" refers to the valuation against which taxes are levied, and the record of the same is to be found in the auditor's office. We so hold.

HELGI JOHANNESON

Attorney General